

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GALEN ELI GEORGE,
Plaintiff,

v.

WASHINGTON STATE,
Defendant.

Case No. C04-5774RBL

REPORT AND
RECOMMENDATION

Noted for September 2, 2005

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has filed a civil rights complaint under 42 U.S.C. § 1983. He is not proceeding *in forma pauperis* in this matter. This matter is before the court due to plaintiff's failure to respond to the court's previous order to file an amended complaint. For the reasons set forth below, the undersigned recommends this complaint be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e).

DISCUSSION

On May 10, 2005, the court ordered plaintiff to file an amended complaint or show cause why this matter should not be dismissed. (Dkt. #24). Specifically, the court found plaintiff's complaint deficient for

1 the following reasons: (1) plaintiff's claim may be considered only in a petition for writ of *habeas corpus*;
2 and (2) plaintiff's claim against the named defendant is barred by the Eleventh Amendment. In addition,
3 the court informed plaintiff that because this court is the wrong venue in which to challenge the validity or
4 duration of his conviction and sentence, should he choose to file a petition for writ of *habeas corpus*, he
5 should do so with the United States District Court for the Eastern District of Washington.

6 On May 31, 2005, plaintiff moved for an extension of time to respond to the court's order to show
7 cause, claiming he had not received the proper complaint forms from the clerk. (Dkt. #25). He requested
8 that the forms be sent again and that he be granted the extension so that he would have a sufficient amount
9 of time in which to respond to the order to show cause. On June 14, 2005, the court granted plaintiff a
10 thirty (30) day extension of time (until July 14, 2005) in which to do so. Plaintiff was warned, however,
11 that should he fail to so respond by the date set forth below, the court would recommend dismissal of this
12 matter. To date, however, plaintiff still has not responded to the order to show cause.

13 CONCLUSION

14 Because plaintiff has failed to respond to the court's order to show cause directing him to file an
15 amended complaint to cure the deficiencies in his complaint, the undersigned recommends the court
16 dismiss that complaint prior to service as frivolous pursuant to 28 U.S.C. §1915(e).

17 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
18 the parties shall have ten (10) days from service of this Report and Recommendation to file written
19 objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
20 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
21 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set this matter for consideration on **September 2,**
22 **2005**, as noted in the caption.

23 DATED this 8th day of August, 2005.

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27 Karen L. Strombom
28 United States Magistrate Judge